

**IN THE UNITED STATES DISTRICT COURT FOR  
THE SOUTHERN DISTRICT OF WEST VIRGINIA**

**HUNTINGTON DIVISION**

ROBERT M. PEREZ,

Plaintiff,

v.

CIVIL ACTION NO. 3:10-1188

CPL COURTNEY TUSHING,

Defendant.

**MEMORANDUM OPINION AND ORDER**

This action was referred to the Honorable Cheryl A. Eifert, United States Magistrate Judge, for submission to this Court of proposed findings of fact and recommendation for disposition, pursuant to 28 U.S.C. § 636(b)(1)(B). The Magistrate Judge has submitted Findings of Fact and recommended that Defendant's Motion to Dismiss pursuant to Fed. R. Civ. P. 12(b)(6) (Doc. #27) be granted; that Plaintiff's Complaints (Doc. #s 2, 5, and 23) be dismissed, with prejudice, for failure to state a claim; and that this matter be removed from the docket of the Court. The movant has filed an objection to the Magistrate Judge's findings and recommendation.


The Court, having reviewed, de novo, the pleadings and movant's Objection and Notice of Reported Defects of Proposed Findings and Recommendations (Doc. #39), **DENIES** the same and **ADOPTS** the Magistrates Judge's Findings and Recommendation.

In his objections, Plaintiff merely restates his conclusory allegations that Defendant falsified evidence and falsely accused Plaintiff of a crime. The Magistrate Judge thoroughly considered the factual claims made by Plaintiff and determined, properly, that his factual claims are insufficient to

support a § 1983 cause of action. First, Plaintiff's allegation (that "material evidence" was withheld from the warrant-issuing judge) fails to defeat probable cause stated in the criminal complaint. The facts Plaintiff says were omitted from that complaint would not negate the probable cause determination. Similarly, evidence Plaintiff points to as being false was inconsequential to probable cause and the charge. Plaintiff cited W.Va. case law that makes knowledge of an accident and injury an essential element of the misdemeanor offense. He is correct, but the defendant had a adequate basis for believing Plaintiff had such knowledge when the criminal complaint was filed. Lastly, Plaintiff's objection provides nothing to support a claim of race-based discrimination. The Court finds no reason to reject the Magistrate Judge's Proposed Findings and Recommendations and therefore **GRANTS** Defendant's Motion to Dismiss pursuant to Fed. R. Civ. P. 12(b)(6) (Doc. #27); **DISMISSES** Plaintiff's Complaints (Doc. #s 2, 5, and 23), with prejudice, for failure to state a claim; **REMOVES** this matter be removed from the docket of the Court

The Court **DIRECTS** the Clerk to forward copies of this written opinion and order to all counsel of record, and any unrepresented parties.

ENTER: March 11, 2011

  
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ROBERT C. CHAMBERS  
UNITED STATES DISTRICT JUDGE